

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH JOHN RHULE and
KENNETH WARREN RHULE,

Defendants.

NO. CR 20-105 JCC

STIPULATED MOTION TO CONTINUE
TRIAL AND PRETRIAL MOTIONS
DATES

NOTE ON MOTION CALENDAR:
November 12, 2020

I. MOTION

Defendant Kenneth John Rhule, by his attorney Peter Offenbecher, defendant Kenneth Warren Rhule, by his attorneys Angelo Calfo and Henry Phillips, and the United States of America, by Assistant United States Attorney Marie Dalton, move to continue the pretrial motions and trial date. Currently, the pretrial motions deadline is November 12, 2020. Trial is scheduled for January 25, 2021. The parties respectfully request that the Court continue the trial to a date convenient for the Court's schedule in April 2021 and set a corresponding pretrial motions deadline.

STIPULATED MOTION TO CONTINUE TRIAL
AND PRETRIAL MOTIONS DATES – 1

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II. FACTS PERTAINING TO MOTION

Both defendants were charged by Indictment on August 5, 2020 with conspiracy to manufacture and distribute marijuana and marijuana products in violation of 18 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. Dkt. No. 31. Kenneth Warren Rhule was also charged with conducting an unlicensed money transmitting business in violation of 18 U.S.C. § 1960, money laundering in violation of 18 U.S.C. §§ 1956 and 2, and possessing a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(1). *Id.*

At the Defendants' arraignment, on August 20, 2020, the Court set the pretrial motions deadline for September 10, 2020, and the trial for October 5, 2020. Dkt. Nos. 46–47. On September 14, 2020, the Court granted the Defendants' motion to continue the pretrial motions deadline until September 17, 2020. Dkt. No. 63.

On September 17, 2020, the parties jointly moved to vacate the trial date and pretrial motions deadline and proposed offering a new trial date within 14 days of the Court's ruling on Kenneth John Rhule's motion to revoke the detention order. Dkt. No. 68. On October 2, 2020, the Court entered an Order continuing the trial to January 25, 2021, the pretrial motions deadline to November 12, 2020, and ordered the parties to file any objection to the trial date within 14 days from the Court's order on the motion to revoke the detention order.. Dkt. No. 73. On October 8, 2020, the Court entered an Order denying the motion to revoke the detention order. Dkt. No. 75.

On October 22, 2020, Kenneth John Rhule filed an objection to the January 25, 2021 trial date, requesting that the trial be continued to a date convenient for the Court's schedule in April 2021. Dkt. No. 80. The parties now jointly renew the request that the Court continue the trial to April 2021 and set a corresponding pretrial motions deadline.

1 The defendants and their counsel need additional time to prepare for trial as the
2 government has produced an extraordinary amount of discovery in this matter and the charges
3 they face are serious, potentially exposing them to 10-year mandatory minimum prison
4 sentences.

5 Defense counsel are working diligently to review the provided discovery, which
6 consists of over 341,000 pages, in addition to native files containing spreadsheets and video
7 recordings. Because Kenneth John Rhule remains incarcerated at the FDC SeaTac amid
8 COVID procedures and precautions, Mr. Rhule's access to the law library to review an
9 electronic copy of the discovery is limited. His counsel's ability to review this discovery with
10 him to prepare for trial or other resolution has therefore been constrained.

11 Based on these facts, it is the opinion of counsel that:

12 (1) taking into account the exercise of due diligence, the failure to grant a continuance
13 in this case would deny counsel for the defendant the reasonable time necessary for effective
14 preparation, due to counsel's need for more time to review the evidence, consider possible
15 defenses, and gather evidence material to the defense, as set forth in 18 U.S.C.
16 § 3161(h)(7)(B)(iv); and

17 (2) failure to grant such a continuance in this proceeding would likely result in a
18 miscarriage of justice, as set forth in 18 U.S.C. § 3161(h)(7)(B)(i); and

19 (3) the additional time requested is a reasonable period of delay, as additional time is
20 needed to determine whether a resolution short of trial can be reached in this matter; and

21 (4) the case is sufficiently complex that it is unreasonable to expect adequate preparation
22 for pretrial proceedings or the trial itself, within the current trial schedule, as set forth in 18
23 U.S.C. § 3161(h)(7)(B)(ii); and

(5) the ends of justice will best be served by a continuance, and that the ends of justice outweigh the best interests of the public and the defendant in any speedier trial, as set forth in 18 U.S.C. § 3161(h)(7)(A); and

(6) the additional time requested between the current trial date of January 25, 2021, and the new trial date in April is necessary to provide counsel for the defendants the reasonable time necessary to prepare for trial, considering all of the facts set forth above.

III. DISCUSSION

Whether to grant a continuance is a matter committed to the sound discretion of the Court. *United States v. Flynt*, 756 F.2d 1352, 1358–62 (9th Cir. 1985). “The concept of fairness, implicit in the right to due process, may dictate that an accused be granted a continuance in order to prepare an adequate defense.” *United States v. Bogard*, 846 F.2d 563, 566 (9th Cir. 1988).

These principles are embodied in the Speedy Trial Act, 18 U.S.C. §§ 3161–3167, which permits the Court to continue a trial if “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speed[ier] trial.” 18 U.S.C. § 3161(h)(7)(A). In making this determination, the Court is permitted to consider both whether the failure to grant such a continuance would “unreasonably deny the defendant or the Government continuity of counsel” and whether such failure would deny counsel “the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(h)(7)(B)(iv). These factors apply to this case.

1 **IV. CONCLUSION**

2 The parties respectfully request that the Court continue the pretrial motions deadline
3 and the trial to a date convenient for the Court's schedule in April 2021.

4 Dated this 12th day of November, 2020.

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6 _____
Peter Offenbecher
SKELLENGER BENDER, P.S.
7 *Attorneys for Defendant Kenneth John Rhule*

8
9 *s/ Angelo Calfo*

10 _____
Angelo Calfo
Henry C. Phillips
CALFO EAKES LLP
11 *Attorneys for Defendant Kenneth Warren Rhule*

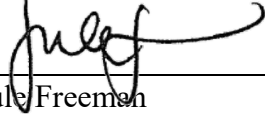
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13 *s/ Marie M. Dalton*

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Marie M. Dalton
Assistant United States Attorney
United States Attorney's Office
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CERTIFICATE OF SERVICE

I, Jule Freeman, certify that on November 12, 2020, I electronically filed the Stipulated Motion to Continue Trial and Pretrial Motions Dates (together with the proposed form of Order) with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

DATED this 12th day of November, 2020.



Jule Freeman
SKELLENGER BENDER, P.S.
Case Analyst